IN THE HIHG COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1106 (M/S) of 2006

Om Prakash Chauhan,
son of Sri Tej Singh
Resident of Sitapur, Hardwar,
Tehsil & District – Hardwar. **……Petitioner**

Versus

1. Sun Rise Prepatary (Registered), Sitapur, Jwalapur, Tehsil and District – Hardwar, through its Secretary.
2. Balwant Singh Chauhan, S/o Sri Dhoom Singh, Secretary, Sun Rise Prepatary School R/o Sitapur, Jwalapur, Tehsil and District – Hardwar.
3. Civil Judge (SD), Hardwar.

…….Respondents

Hon'ble M.M. Ghildiyal, J.

Heard Sri Anurag Bisaria, learned counsel for the petitioner and Sri Paresh Tripathi, learned counsel for State of Uttaranchal on behalf of respondents no. 3.

By means of this writ petition, the petitioner has prayed for the following reliefs:

1. *Issue a writ, order or direction for learned court below to expedite the original suit no. 4/03 "Sun Rise School Vs. Om Prakash and others" pending in the court of Civil Judge (SD), Hardwar without further delay.*

II. *Issue a writ, order or direction for learned court below to decide expeditiously an application dated 26.04.2005 filed under Order 7 Rule XI of CPC which is exihibited as Paper No. 24 Ga 2 and application dated 20.09.2005 exihibited as Paper No. 33 Ka in Original Suit No. 4 / 2003 of the defendant/ petitioner.*

III. *To pass any other order, which this Hon'ble Court deems fit and proper.*

IV. *Award cost throughout.*

The facts as narrated in the writ petition are that petitioner is President of Committee of Management, Sun Rise Prepatary School, Sitapur, Jwalapur, Tehsil and District – Hardwar. Plaintiffs respondents have filed suit no. 4 of 2003 with a prayer for issuing Declaratory Decree against the defendant petitioner for declaring the meeting dated 15.07.2002 as null and void and also for declaring that the defendant nos. 10 – 15, who have appointed as Members of the Committee of Management in pursuance to the meeting dated 15.07.2002 have no right as they are not validly inducted members.

Petitioner has filed written statement and also moved an application under Order 7 Rule XI of CPC for rejection of suit on the ground that the Committee of Management is a Society registered under Societies Registration Act and according to the provision of Section 25 of the Act if there is any dispute regarding portfolio, election or any other dispute for holding the post the jurisdiction to decide the dispute lies with the Prescribed Authority / Registrar, Society and the Civil Court has no jurisdiction and as such, the plaint is not maintainable. Application under Order 7 Rule XI of CPC was filed by the petitioner on 26.04.2005, however, the said application has yet not been decided though objection to the application has already been filed by the plaintiffs respondents on 21.10.2005.

Another application was moved by the petitioner on 20.09.2005 that the term of Committee of Management has already been expired and new Committee of Management has already been elected. On this application too the court below has not passed any order.

During the course of argument learned counsel for the petitioner has confined his prayer that respondent no. 3 i.e. Civil Judge (SD), Hardwar may be directed to pass order on both the applications of the petitioner within a particular period.

In the circumstances stated above, I deem it fit and proper to direct the Civil Judge (SD), Hardwar to decide the application under Order 7 Rule XI of CPC and application dated 20.09.2005 filed by petitioner in suit no. 4 of 2003, pending before him as expeditiously as possible preferably within a period of four months from the date of production of certified copy of this order.

With this direction the writ petition as well as interim relief application no. 10472 of 2006 is finally disposed of. No order as to costs.

(M.M. Ghildiyal, J)

August 19, 2006
SKSharma